

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:)	
)	
Amendment of Section 73.215 of the)	RM-11643
Commission's Rules related to)	
Contour Protection for Short Spaced)	
FM Assignments)	

To: Marlene Dortch, Secretary
Attention: Media Bureau

REPLY COMMENTS

SSR Communications, Inc. ("Petitioner") hereby submits its Reply Comments in the above-captioned proceeding. In its initial Petition for Rulemaking ("Petition," now designated as RM-11643), Petitioner has asked the Commission to consider three separate proposals. Specifically, Petitioner has asked the Commission to (1) eliminate the "Proposed Allotment or Assignment Coordinates" requirement for non-reserved band FM minor modification applications within FCC Form 301, "Application for Construction Permit for Commercial Broadcast Station"; (2) modify Section 73.215(b)(2)(ii) of the Commission's Rules such that only the actual contours of existing FM non-reserved band facilities not authorized under Section 73.215 of the Commission's rules be respected (rather than the use of presumed maximum class facilities); and (3) remove Section 73.215(e) of the Commission's Rules. Petitioner continues to assert that such policy changes would serve the interests of the public.

BACKGROUND

On August 8, 2011, Petitioner submitted a proposal to the Commission to amend Section 73.215 of the Commission's Rules to give non-reserved band licensees and permittees largely the same site selection and engineering flexibilities as found under Section 73.509 of the

Commission's rules available to reserved band noncommercial educational FM facilities. The Commission solicited comments regarding Petitioner's proposal (RM-11643) between September 28, 2011 and October 28, 2011. Although all of the initial comments were in favor of the proposal (*i.e.*, Spencer, Calvary Chapel, Puopolo, Collins, Desmond, Mississippi Association of Broadcasters, KD Radio, Haynes, Communications General, Harrison), Petitioner did receive several comments in general opposition (*i.e.*, Beasley Joint Statement, Cohen, NAB, Vero Beach, iBiquity, or collectively, the "Opposing Parties") on the deadline for filing. Petitioner has examined all comments in this matter and has prepared its response herein.

HIGH DEFINITION RADIO IMPACT

Most of the Opposing Parties' comments focus upon a general claim that Petitioner's proposal allegedly will adversely impact digital radio. In its comments, for example, the iBiquity Digital Corporation ("iBiquity") states that the Petitioner has "failed to advance any evidence that the proposed rule change can be implemented without harm to digital FM broadcasting." Comments of iBiquity Digital Corporation at ¶ 9. Petitioner has reexamined its original Petition and is unable to identify which digital radio rules iBiquity and the Opposing Parties believe that Petitioner is seeking to modify. Petitioner is not, in fact, requesting *any* change to the Commission's Rules pertaining to digital broadcasting. Furthermore, the Opposing Parties' comments do not produce one specific "real world" or even hypothetical example as to exactly how Petitioner's proposal would conceivably endanger digital radio. iBiquity and others make vague and broad assertions that the Petition will cause harm to digital radio without the slightest bit of evidence to support their claim. As such, those allegations should be rejected.

Petitioner asserts that any argument alleging new (but, in the case of the Opposing Parties' comments, unspecified) interference to the digital radio environment is fatally flawed.

Petitioner's proposals to modify Section 73.215 of the Commission's rules simply would afford non-reserved band stations the same fundamental engineering flexibilities as found in Section 73.509 of the Commission's rules, *i.e.*, those contour protection standards which govern noncommercial educational FM facilities. The Opposing Parties' comments have conveniently failed to explain why digital radio is a success in the noncommercial educational band but would be allegedly plagued by indeterminate interference problems when receivers are tuned to the non-reserved band.

Petitioner has undertaken its own investigation to determine how the proposals contained in its Petition may affect digital broadcasting in its own state of Mississippi, using iBiquity's digital radio station guide as its source (available at <http://www.hdradio.com>). Petitioner was surprised to learn that, of the ten total digital FM facilities in operation in Mississippi, *every single digital station is in the noncommercial educational band* -- the same band governed by Section 73.509, which allows applicants the flexibility to protect the actual contours of other co-channel and adjacent-channel facilities. See Figure 1, attached hereto. Given (i) that Petitioner's proposal would allow non-reserved band licensees and permittees engineering advantages mirroring Section 73.509 of the Commission's rules, and (ii) the documented success of digital radio within the reserved band, it is the Petitioner's assertion that the Opposing Parties have failed to demonstrate how the proposed rule changes *would harm* digital FM broadcasting within the non-reserved band.

Petitioner contends that, if anything, the Commission's adoption its proposals has the potential to *enhance* digital radio. Any station receiving upgraded facilities under the proposed rules would also be eligible to upgrade its corresponding digital facilities, thus increasing the reach of its digital signal.

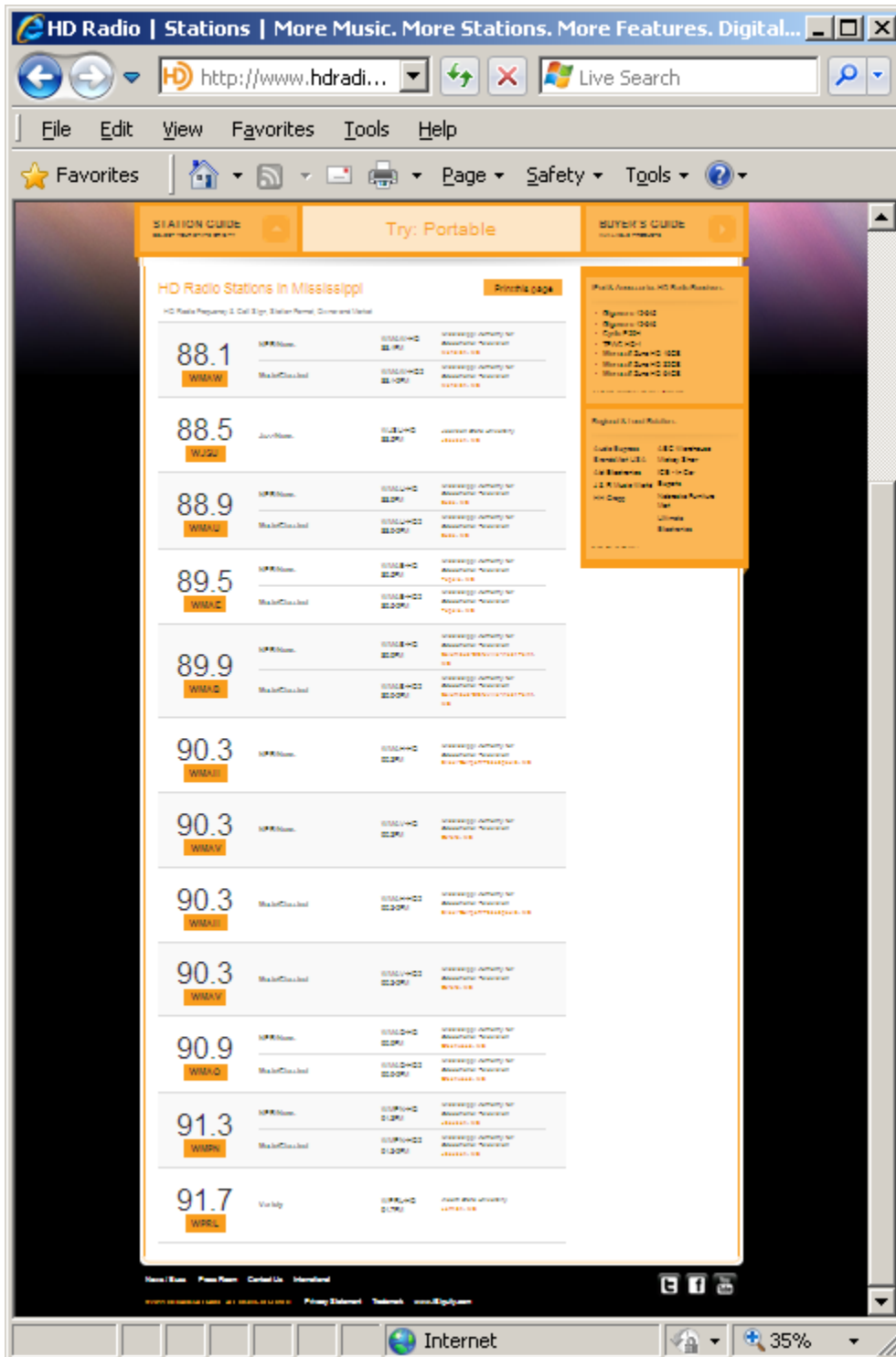


FIGURE 1: All Digital Radio Stations in Mississippi. It should be noted that all digital radio stations within Petitioner's home state of Mississippi are within the reserved FM band, a band in which licensees and permittees (1) have no need to specify a hypothetical allotment location, (2) need only protect the actual contours of neighboring stations, and (3) are not regulated by Section 73.215(e), three rules which precisely align with Petitioner's proposal to amend Section 73.215 for non-reserved band licensee and permittees.

HYPOTHETICAL ALLOTMENT SITE CONSIDERATION

Several of the Opposing Parties' comments devote attention to Petitioner's request that the Commission eliminate the need for non-reserved band licensees and permittees to specify a hypothetical fully-spaced allotment location when filing an FCC Form 301 minor modification application. In its original Petition, Petitioner claims that non-reserved band licensees and permittees are at a significant engineering disadvantage when tasked with locating a hypothetical allotment site, particularly when there is absolutely no technical reason why a hypothetical allotment location should be required. Petitioner also already has stated that "no other aural broadcast service, including AM, noncommercial educational FM, low power FM, FM translator, or FM booster is required to demonstrate the existence of a second hypothetical location in which a facility *could* operate" (Petition at 4), but the comments of the Opposing Parties conveniently ignore this detail.

In the "Joint Statement of Beasley Broadcasting Group, Bryan Broadcasting Corporation, et al.," ("Beasley Joint Statement"), the Beasley Joint Statement attempts to make a technical argument by stating that Petitioner's proposal would amount to "[d]ismantling of the minimum spacing system ... [resulting] in many small and interference-ridden signals rather than high quality services." Beasley Joint Statement at 6. The Beasley Joint Statement also says that, under Petitioner's proposal, "the total area which receives productive service will be less than under a system where stations are protected according to their class." Beasley Joint Statement at 6. The Beasley Joint Statement even goes on to provide a "laws of physics" argument as to how lower powered stations created an undesirable service-to-interference ratio when compared to higher powered stations.

The Opposing Parties' comments contain an abundance of supposition, lacking any substance or a single "real world" example. Petitioner need only look at its own station, WYAB 103.9 FM, to upend the Opposing Parties' claims. WYAB is licensed under the Commission's *current rules* with 5,000 watts of effective radiated power from an antenna height of 99 meters above average terrain (with an omnidirectional antenna), and as such, provides a F(50,50) 60 dBu service area of 2,295 km² versus a F(50,10) 40 dBu interference area of 19,681 km², for a 11.66% service-to-interference ratio. Under Petitioner's proposal, however, WYAB would be eligible to improve to a full Class A facility from its current location, with 6,000 watts of effective radiated power from an antenna height of 100 meters above average terrain, and would provide a F(50,50) 60 dBu service area of 2,515 km² versus a F(50,10) 40 dBu interference area of 21,080 km², for a 11.93% service-to-interference ratio. Taken to the Petition's fullest extent, WYAB would be eligible to increase to 12,000 watts of effective radiated power from an antenna height of 100 meters above average terrain, and would provide a F(50,50) 60 dBu service area of 3,480 km² versus a F(50,10) 40 dBu interference area of 26,848 km², for a 12.96% service-to-interference ratio. Under Petitioner's proposal, WYAB would provide a *far better* service-to-interference ratio than under the current system. Thus, Petitioner need only look at its own station to invalidate the claims of the Opposing Parties.

STATIONS WOULD NOT BE LIMITED TO THEIR EXISTING FACILITIES

Several of the Opposing Parties' comments claim that Petitioner's proposal would affect the abilities of existing stations to modify their operating parameters. The "Comments of the National Association of Broadcasters" ("NAB Comments") assert that, "under the Petitioner's proposals, all stations in the non-reserved FM band would be hemmed-in, unable to change antenna site" (NAB Comments at 6) and the Petition would "effectively lock FM stations into

their current power levels” (NAB Comments at 7). Once again, the Opposing Parties have supported their argument through conjecture alone. Not one “real world” or even hypothetical example was cited to bolster the argument that existing stations will be limited to their current facilities.

Petitioner asserts that non-reserved band licensees are far more likely to be “hemmed in” to their existing sites under the *current* rules. During the Commission’s initial comment window for this proceeding, Petitioner offered publicly to assess, at no charge, its proposal’s impacts for other existing facilities from their current tower locations and antenna heights. Petitioner was tasked to research twenty separate non-reserved band FM facilities and/or construction permits, including KFXV, KIOX, KKMT, KNDE, KSBU, KZJZ, WBYP, WJMA, WLYB, WNTC, WOJL, WRTM, WSJD, WWBR, WXHC, WXMT, WYAB, WYBR, WZKR, and an unbuilt construction permit associated with Facility ID 166040. All twenty stations are presently “hemmed in” to their maximum effective radiated power levels from their existing tower locations under the current rules. Under the Petitioner’s proposal, however, *each of these twenty stations* would be eligible for a power increase from its existing tower location and antenna height, many of which would be eligible to increase to 100,000 watts (such as KNDE, currently operating at only 38,000 watts). Of the twenty total stations considered, Petitioner has collected twenty separate counter-examples to the claims of the Opposing Parties. Therefore, Petitioner strongly disagrees with the Opposing Parties’ presumptions that its Petition, if implemented, would forever lock licensed stations into their existing facilities.

RETENTION OF THE CURRENT SYSTEM

Many of the Opposing Parties’ comments question the Petitioner’s intent to modify a system which they believe is not flawed. In its comments, NAB states that “FM stations in the

non-reserved portion of the FM band have been well served by the (current) approach.” NAB Comments at 3. NAB and the Opposing Parties portray the Commission’s current rules as a system which works well and is not in need of fine tuning. This stance is not unexpected, as the bulk of the desirable highest-powered stations are owned by the same large group operators that benefit from contour overprotection currently found in Section 73.215 of the Commission’s Rules. The Opposing Parties believe that this overprotection is warranted and even necessary, even though they cite no specific technical reasons to support their claims.

Petitioner contends that the current system *is* flawed, and that retention of Section 73.215 of the Commission’s Rules in its existing form represents an inefficient use of broadcast spectrum. Those licensees and permittees who are willing at present to invest in specific facility upgrades, increased service areas, and other enhancements are prevented from doing so, while other licensees and permittees are overprotected so as to allow for supposed upgrades that *may or may not occur* at some indefinite future date.

Petitioner (once again) need only look at its own station, WYAB 103.9 FM, for supporting evidence of its claim. WYAB currently operates with 5,000 Watts of effective radiated power from an antenna located 99 meters above average terrain, both values below those found of a full Class A facility. Under the current rules, WYAB must overprotect a first-adjacent Class C0 facility, WFFX in Hattiesburg, Mississippi (licensed to CC Licenses, Inc., a cosigner of the Beasley Joint Statement), as if it were operating with an antenna height of 450 meters above average terrain (the maximum antenna height for its class), even though the station is only licensed to operate at 324 meters above average terrain. In the azimuth towards WYAB, WFFX’s theoretical maximum F(50,10) 54 dBu interfering contour extends approximately 125.4 kilometers from its broadcast site, whereas its *actual* interfering contour extends only 109.4

kilometers from its broadcast site. Under the current rules, WYAB is required to give WFFX 16.0 kilometers of “extra” protection, effectively requiring WYAB to remain clear of the WFFX F(50,10) 50.1 dBu contour, for absolutely no technical reason. Petitioner’s proposal would eliminate contour overprotection not just for its own station, but for many other facilities as well.

In its original Petition, Petitioner states “given the maturity of the FM broadcast service, that any licensee of a sub-maximum class facility intent on building out a maximum class facility would certainly have done so by now, some quarter-century after the original Commission Notice and subsequent Order paving the way for the creation of Section 73.215.” Petition at ¶ 7. In its comments, NAB declares that “Petitioner offers no evidence for this invalid assumption.” NAB Comments at 7. Petitioner asserts that there is ample evidence to support its statement, and once more, need only look to its own station for verification of its claim.

As stated above, Petitioner’s WYAB 103.9 FM is a sub-maximum class A facility overprotecting the theoretical maximum class F(50,10) 54 dBu interfering contour of station WFFX 103.7 FM, a Class C0 facility operating well under its maximum antenna height above average terrain. WFFX’s broadcast antenna is co-located with Class C0 station WNSL 100.3 FM at Laurel, Mississippi (also owned by CC Licenses, Inc.). In 2002, WNSL attempted to preserve its then-Class C status by proposing the construction of a 451 meter tower at the existing WFFX/WNSL broadcast location (BPH-20020808ADP). The Commission dismissed the WNSL application in 2003, however, as the Federal Aviation Administration issued a Determination of Presumed Hazard to Air Navigation (see FAA Study No. 2002-ASO-4898-OE) to any structure over 1,166 feet (355 meters) at that location. In the intervening *eight years* since the WNSL application dismissal, CC Licenses has made no attempt to construct (or even apply for) full facilities for the WFFX/WNSL antenna tower. Additionally, WFFX and WNSL were

sub-maximum class facilities for their entire history up to that point. Accordingly, Petitioner asserts that CC Licenses is highly unlikely to ever seek full Class C0 status for either station, yet each facility continues to enjoy contour overprotection from adjacent facilities under Section 73.215 of the Commission's current rules.

Additionally, the "Comments of Calvary Chapel of Costa Mesa, Inc." ("Calvary Chapel Comments") and others make numerous references to the so-called "underground antenna anomaly" (*e.g.*, Calvary Chapel Comments at ¶ 3), a counter-intuitive abnormality contained within Section 73.215 of the Commission's rules that surfaces when considering non-reserved band facilities mainly in areas of mountainous terrain. Retention of the Commission's current rules would continue to impede stations affected by this inconsistency. Though it was not the Petitioner's original intent to cure the matter of the hypothetical underground antenna location, Petitioner does recognize that its proposal would eliminate the anomaly and allow those affected stations greater latitude in antenna site selection.

IMPACT ON RURAL RADIO FACILITIES

In the Joint Statement, the bizarre allegation is made that Petitioner's proposals represent an attempt to eviscerate the Commission's policies to promote rural radio service. The statement postulates that "Petitioner all but admits that its proposal will provide a run-around of the Rural Radio Service changes." Joint Statement at 11. Petitioner has again reexamined its own Petition and is unsure as to which document the Opposing Parties' may have been exposed. Petitioner's proposal *very particularly* states that "adoption of this proposal will allow existing commercial FM broadcasters the opportunity to upgrade their facilities without the need to change their community of license or abandon their rural listeners, a priority the Commission favored in MB Docket No. 09-52." Petition at 8. Given its definitive statement in affirmation of the retention of

rural radio services, Petitioner strongly disagrees with the Opposing Parties' assertion that its proposal would provide some "run-around" of the Commission's policies pertaining thereto.

CONCLUSION

Petitioner again respectfully requests that the Commission fully consider its proposal, as it will enable many existing non-reserved band FM broadcast facilities to significantly improve their service areas without impacting the actual service areas of other co-channel and adjacent channel stations. Petitioner's proposal will promote fair and efficient use of the FM broadcast spectrum, as many millions of listeners will receive improved FM service. The Opposing Parties' comments, while laced with conjecture and unsubstantiated claims, have advanced absolutely no technical reasons why Petitioner's proposal should not be adopted. Petitioner (along with the ten other parties in general favor of Petitioner's proposal) respectfully believes that Section 73.215 of the Commission's Rules (as well as the other changes proposed herein) is in need of a comprehensive overhaul and asks that a Notice of Proposed Rulemaking be issued in the proceeding without delay.

Respectfully submitted,

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November 14, 2011

CERTIFICATE OF SERVICE

I, Matthew Wesolowski, certify that I have sent copies of these Reply Comments via First

Class U.S. Mail this 14th day of November, 2011, to:

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